Airborne Freight Corporation *and* Truck Drivers Union Local No. 407 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America *and* Alvin Gordy. Cases 8-CA-13784 and 8-CA-14335

September 21, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND ZIMMERMAN

On August 5, 1981, Administrative Law Judge Arline Pacht issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief and a brief in support of the Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt her recommended Order.

As more fully set forth in the attached Decision, the Administrative Law Judge found, *inter alia*, that Respondent, on numerous occasions, hired individuals solely because it believed they were opposed to the Union. One of these individuals, Dianne Popadich, was solicited by Karen Thiel, wife of Respondent's regional manager. Mrs. Thiel approached several women at a racquetball club. She asked if any were interested in working part time for Respondent because "the Union was trying to come in and they wanted somebody part-time to vote against the Union." Popadich indicated that she was interested and shortly thereafter Mr. Thiel contacted her and, although she had no previous experience, hired her the same day.

It is undisputed that Mrs. Thiel made the remark attributed to her. Equally as clear is that "they" to which she was referring is the management of Respondent, of whom her husband was the highest ranking area official. Her statement was ratified when "they," in the person of her husband, promptly hired the inexperienced Popadich.

We also stress, as found by the Administrative Law Judge, that this was just one example of an overall scheme engaged in by Respondent to pack the unit with employees who opposed the Union. Indeed, as correctly reasoned by the Administrative Law Judge, this incident was the "most egregious example of Respondent's unlawful purpose." To conclude, as does our dissenting colleague, that Mr. Thiel did not tell his wife to solicit applications, let alone under the terms that "they" wanted somebody to vote against the Union, is to shut one's eyes to the realities of the case and this we are unwilling to do.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Airborne Freight Corporation, Cleveland, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

MEMBER ZIMMERMAN, dissenting in part:

Contrary to my colleagues, I find that Respondent did not violate Section 8(a)(1) of the Act when Karen Thiel, wife of Respondent's regional manager, approached a group of players at a racquetball court and asked whether any of them were interested in working as part-time clerks for Respondent. Mrs. Thiel advised the racquetball players that the Union was attempting to organize Respondent's employees and that Respondent "wanted somebody part-time to vote against the Union." One person, Dianne Popadich, expressed interest in employment with Respondent. Subsequently, Regional Manager Thiel contacted Popadich and offered her a job, which she accepted.

Mrs. Thiel was not employed in any capacity by Respondent. She had no actual authority to act or speak for Respondent. Respondent did not hold out Mrs. Thiel to the public as one of Respondent's representatives. Mrs. Thiel's *only* "connection" to Respondent was that she was married to one of its

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing her findings. We also find totally without merit Respondent's allegations of bias and prejudice on the part of the Administrative Law Judge. Upon our full consideration of the record and the Administrative Law Judge's Decision, we perceive no evidence that the Administrative Law Judge prejudged the case, made prejudicial rulings, or demonstrated bias against Respondent in her analysis or discussion of the evidence. Additionally, we find that Respondent was not misled by statements made by the Administrative Law Judge relative to Respondent's request to introduce evidence regarding its practice of filling vacancies at other locations. While the Administrative Law Judge indicated that she felt such evidence would be of little probative value, she also said that, if Respondent felt that the evidence was necessary to its defense, it was not foreclosed from introducing it.

Finally, we do not agree with Respondent's contention that because the Administrative Law Judge erroneously wrote Detroit, Michigan, as the place of the hearing, rather than Cleveland, Ohio (a harmless oversight which we hereby correct), that someone other than the Administrative Law Judge wrote the Decision.

regional managers. And yet it is on that basis, and that basis alone, that the Administrative Law Judge found Mrs. Thiel to be an agent of Respondent, and Respondent to be liable for Mrs. Thiel's indiscretions and improprieties. Thus, according to the Administrative Law Judge, "Popadich had good reason to believe that Karen Thiel was acting pursuant to Respondent's authority since she was the wife of Respondent's regional manager." I find this to be, without more, a wholly insufficient basis in itself upon which to hold Respondent liable for Mrs. Thiel's acts,[2] and I find the cases relied upon by the Administrative Law Judge in support of her finding of Mrs. Thiel's agency status to be inapposite.[3] Accordingly, I find that Respondent is not liable for Mrs. Thiel's statements, and I would dismiss this allegation of the complaint.[4]

Notwithstanding my disagreement with my colleagues on this issue, I am in full agreement with them on all the other violations found herein, and on the appropriateness of a bargaining order against Respondent based on those violations.

[2] *Fairland Market, Inc., d/b/a Foodland*, 233 NLRB 708, 713 (1977); *Kurt A. Perschke, a sole proprietorship d/b/a Perschke Hay & Grain*, 222 NLRB 60 (1976); *Boston Cab Company, Inc. & McCann's Taxi, Inc.*, 212 NLRB 560, 565 (1974); *F. M. Broadcasting Corp.*, 211 NLRB 560, 565 (1974); *Radco Enterprises, Inc.*, 189 NLRB 278, 279 (1971). See also *Firestone Steel Products Company, a Division of Firestone Tire and Rubber Company*, 235 NLRB 548, 550 (1978).

[3] In *Aircraft Plating Company, Inc.*, 213 NLRB 664 (1974), the Board held an employer accountable for interrogation and threats made to other employees by an employee who was the son of the president and half owner, nephew of the vice president and part owner, and cousin of the plant superintendent of the closely held, single-plant employer, and whose relationship to these high management officials was well known to and frequently observed by the other employees. Moreover, the offending employee in question was himself the employer's safety director, in charge of ensuring the compliance by other employees with OSHA directives, was paid a salary, and did not punch a timeclock. Little wonder, then, that the Board in *Aircraft Plating* found that:

> While family relationship is but one of the factors to be considered in determining the employees' perceptions of Leslie's status, that relationship, when viewed in the context of the other factors, noted above, is sufficient to identify him with management.

There is, obviously, little resemblance between the overwhelming factual support for the Board's finding that the employee in *Aircraft Plating* had apparent authority to speak and act for the employer, and the decidedly meager support in the instant case for my colleagues' finding that nonemployee Mrs. Thiel was an agent of Respondent.

In *American Door Company, Inc.*, 181 NLRB 37 (1970), the other case relied upon by the Administrative Law Judge in this context, the Board held an employer accountable for coercive statements made to other employees by an employee who was the son of the president and brother of the secretary-treasurer of the small (2-plant) 35-employee family-owned and family-operated employer, and whose relationship to these two principal operating officers was well known to the other employees. The employee in question did not punch a timeclock and was paid a salary which gave him an income almost three times higher than the rest of the employees. Moreover, the employee in question was actually present and stood silently by, aligned with management, while his father and brother called employees into a management office and interrogated them, solicited their grievances, and threatened them with loss of pay and benefits and with plant closure if the union succeeded in organizing the employees. Subsequently, the employee in question started a fist fight with a prounion employee, told that employee to leave the plant, and was then assisted by his father, the employer's president, in evicting the prounion employee from the plant. As in *Aircraft Plating, supra*, it comes as no surprise that the Board in *American Door* upheld the Administrative Law Judge's finding that:

> Although the family relationship is but one of the factors to be considered, this relationship, when viewed in the context of the other differences noted between Stooks and the employees, is sufficient to identify him with management. [181 NLRB at 43.]

Once again, there is little resemblance between the abundant factual support for the Board's finding that the employee in *American Door* had apparent authority to speak and act on behalf of the employer, and the dearth of support in the instant case for my colleagues' finding that nonemployee Mrs. Thiel was an agent of Respondent.

[4] Thus, I am not persuaded, as my colleagues appear to be, that Mr. Thiel's telephone call to Popadich somehow constituted a ratification by Respondent of Mrs. Thiel's intemperate remarks. First, as seen, there is no evidence that Mr. Thiel even *suggested* that his wife solicit applicants for employment with Respondent, much less that she solicit them under an implied condition that they be opposed to the Union. The counsel for the General Counsel concedes as much in her brief, wherein she states that:

> [I]t is established that Richard Thiel advised his wife he was looking for employees. She responded by recruiting prospective employees *and advising them that they were needed to vote against the Union in an NLRB election.* [Emphasis supplied.]

Thus, there is no evidentiary support for finding that Mrs. Thiel's comments to the racquetball players were authorized by Respondent.

Second, and most importantly, there is no evidence that Mr. Thiel was ever subsequently made aware of his wife's self-styled importunings. It is clear only that Mrs. Thiel passed Popadich's name on to her husband as a potential job applicant. But there is no showing that Mrs. Thiel also admitted to her husband that she had couched her solicitation of job applicants in terms of their opinion of the Union. In the absence of any evidence that Respondent *knew* about Mrs. Thiel's allegedly unlawful remarks, any finding that Respondent ratified these remarks is simply not supported. *Fairland Market, Inc., supra* (son's alleged incriminatory remarks not attributed to employer where not made in presence of or with knowledge of parents/owners). See also *P. E. Van Pelt, Inc. d/b/a Van Pelt Fire Trucks*, 238 NLRB 794, 798 (1978) (remarks of supervisor's brother-in-law not attributed to employer where no evidence that remarks were prompted by or made in "ratifying presence" of management). Compare these cases with *Berger Transfer and Storage, Inc.*, 253 NLRB 5, 12 (sec. 6(g)) (1980) (wife's interrogation of employee attributed to employer where made in presence of, and with silent acquiescence of, her husband, employer's vice president); *P. E. Van Pelt, Inc., supra* (remarks by supervisor's brother-in-law attributed to employer where made in presence of, and with obvious approval of, supervisor).

DECISION

STATEMENT OF THE CASE

ARLINE PACHT, Administrative Law Judge: This proceeding was heard in Detroit, Michigan, on April 13 through 16, 1981. The consolidated complaint as amended on March 6, 1981,[1] and as further amended prior to and during the course of the hearing alleges that Respondent engaged in numerous efforts to thwart the organizing activities of Truck Drivers Union Local No. 407 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter the Union), in violation of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act). In addition, the consolidated complaint alleges that Respondent terminated Alvin Gordy, the Charging Party herein, in reprisal for his union or other protected concerted activities in violation of Section 8(a)(1), (3), and (4) of the Act.

[1] The March 6 amendments were in compliance with a February 18, 1981, Order of Administrative Law Judge William Gershuny granting Respondent's motion for a bill of particulars.

In view of the foregoing alleged unfair labor practices, the complaint further contends that Respondent refused to bargain with the Union which had obtained valid authorization cards from a majority of employees in an appropriate unit, under circumstances which call for a bargaining order pursuant to *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575 (1969).

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs submitted by counsel for the General Counsel (hereinafter the General Counsel) and Respondent, I make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. JURISDICTION

Respondent, a Delaware corporation, with its principal place of business in Seattle, Washington, is engaged in the business of air freight forwarding. Respondent operates at approximately 90 locations throughout the United States including a facility in Cleveland, Ohio, the sole office involved herein. During fiscal year 1979, Respondent, in the course and conduct of its business operations within Ohio, derived gross revenues in excess of $7.8 million for the transportation of freight and commodities in interstate commerce pursuant to agreements with interstate common airlines carriers. By virtue of these operations, Respondent functions as an essential link in the transportation of freight and commodities in interstate commerce. Accordingly, Respondent admits and I find that it is an employer within the meaning of Section 2(6) and (7) of the Act.

The Union is, and has been at all material times, a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

The Employees Organize

On Saturday, March 1, 1980, employee Claudia Hillenbrand arranged a meeting at her home between John Tanski, the Union's business agent, and the employees in the operations division of Respondent's Cleveland facility.[2] At that time, the five employees in attendance signed cards authorizing the Union to serve as their collective-bargaining representative. Later that day, two additional employees also signed cards, bringing the total to seven of the nine members then in operations.[3]

The following Monday, March 3, Tanski called upon company officials, announced that a majority of employees had signed authorization cards, and requested recognition. Several days later, after consulting with corporate headquarters, Respondent's regional manager, Richard Thiel, advised Tanski that Respondent was rejecting the bargaining request.

Thereafter, on March 7, the Union filed a petition for an election which was scheduled for May 2 in a unit designated in the complaint as:

> All full-time and regular part-time operations agents, customer service representatives, rate clerks, operations clerks and billing clerks . . . but excluding confidential secretary, salesmen and all professional employees, guards and supervisors as defined in the Act.

III. ALLEGED ACTS OF INTERFERENCE, RESTRAINT, AND COERCION

A. *Paragraph 10(a)(1) of the Complaint*

In the several weeks subsequent to the Union's bargaining demand, six additional operations employees were hired as part of what the General Counsel contends was Respondent's persistent campaign to dilute the Union's majority.

At no time in the previous 3 years of the Cleveland station's history were so many new employees added to the operations unit in so brief a period of time. Two among this new group, Paul Johnson and James Kasper, began working full time on March 10. Sam Saraniti, a former salesman with Respondent, testified that on Friday, March 7, District Manager Mark Nemecek called him into his office, informed him that the operations personnel were organizing, stated that the Company would be expanding, and then asked him if he knew of anyone interested in a job with that section. Saraniti had been asked to recruit for the sales division but this was the first occasion that a request for operations referrals had been addressed to him.

Saraniti testified on direct that, when he asked how long the position would last, Nemecek responded that it depended on "how long this thing would last with the Union."[4] Saraniti told his long-term friend, Paul Johnson, about the opening that evening, informing him that a union campaign was underway and that he might be included in a vote. Although Saraniti denied discussing with Johnson how he would vote, it is impossible to believe, in light of his other comments about the Union, that this question was skirted. Johnson was interviewed on the following Monday, March 10, and the same day commenced working as a customer service representative. There can be no doubt that he was hired with the union election in mind for in June, after the election had been blocked, Casserly remarked to Hillenbrand that it looked like the new people were there to stay, and then asked her to work with and train Johnson.

Kasper also began working as a customer service representative on March 10. His application form shows that he initially sought a job with Airborne in December 1979, and that his previous employment was as an assistant manager in a grocery store earning $3.30 an hour and

[2] Employees at the Cleveland station are categorized into three functional units: operations, sales, and cartage.

[3] The seven employees to sign cards that day were Francis Frey, Alvin Gordy, Claudia Hillenbrand, Cynthia Kaznoch, Sue Malovic, Anthony Parete, and Sonja Sekic. Two others, part-time employee Sue Smith and Mary Panacewicz, a private secretary, were not approached to sign cards.

[4] In response to another question, Saraniti later denied that Nemecek made this remark. It was apparent, however, and, indeed, Saraniti conceded that he was testifying with great reluctance to events which he knew were inimical to the interests of his former employer. Therefore, I credit his earlier testimony given at a time when he had less opportunity to assess its implications.

before that as a salesman. He was referred to the Company by a friend who, as Saraniti disclosed, was Doug Casserly, the station manager.

Four other persons hired on a part-time basis in the few weeks after the Union's bargaining demands all were referred to Respondent by persons aligned with management.

John Landino, a student who worked for Respondent as a truckdriver the previous year, was rehired and began working on March 10 as a part-time operations clerk while he was still in college. His original application states that he, too, was referred to Respondent by Casserly, and that his previous experience was as a dockworker. Coworkers testified that Landino occasionally was observed studying while on the job, had attendance problems, and quit in early June after graduating from college.[5]

Paul Meshenberg, a cooperative education student, who worked for Respondent in the sales division the previous year, also returned in early March on a part-time basis. Hillenbrand testified without controversy that Meshenberg told her that Nemecek requested him to return to work in the customer service area either part or full time, 3 weeks before he had planned to do so. Meshenberg expressed concern that the early return would interfere with forthcoming exams.

Nemecek failed to explain the urgency which required Meshenberg's hasty reemployment. However, on his return, Meshenberg told Hillenbrand, with whom he had lunched frequently the year before, that they should drive to lunch in separate cars since he wished to avoid being seen with her because of her union sympathies. Any doubt as to where Meshenberg's interests lay were evaporated by Gordy's testimony that Meshenberg admitted to him he would vote against the union. His predilections were known to management as well, for Meshenberg's name appeared on a list developed by Regional Manager Richard Thiel, of those employees who opposed the Union.[6]

The most egregious example of Respondent's unlawful purpose in enlarging the operations division during the critical preelection period is demonstrated in the employment of Dianne Popadich. She gave undisputed testimony about the following incident. On or about March 7, Karen Thiel, wife of Richard Thiel, approached her and a group of other women playing racquetball and asked if anyone was interested in a part-time clerical job at Airborne, explaining that because "the Union was trying to come in and they wanted somebody part-time to vote against the Union." Popadich expressed some interest in the position but did not recall being asked or revealing how she would vote. When Richard Thiel contacted her by phone shortly thereafter, she indicated that she was uncertain about how long she might wish to stay. Nevertheless, she was hired the same day. Her application form shows her experience was as an elementary education school teacher. She left Respondent in June because of family commitments.

The last new part-time employee to be hired in this brief period was Gail Recek. Her application provides no information as to how she was referred to Respondent. However, Saraniti testified that she was a friend of Mary Panacewicz, Thiel's personal secretary.[7] Hillenbrand further observed that, although Recek worked the night shift, she had lunch with Panacewicz on several occasions.[8] Recek's only prior experience was as a salesclerk in a department store.

The methods by which these new employees were recruited and the rapidity with which they were hired deviate markedly from the elaborate process attending the employment of many of the existing operations staff. Four witnesses, Hillenbrand, Sekic, Parete, and Frey, testified that they were interviewed two or three times by different officials over a span of several weeks before offers were extended. Thus, none of them was hired or started work on the day of their first interview. Moreover, Parete, Sekic, Frey, Hillenbrand, and Gordy had prior business experience which equipped them for their new positions. All but Parete learned of the job openings through newspaper advertisements. Respondent ran no ads for operations recruits in February or March.

It is apparent from the record that Respondent had no advance plans to almost double its operations staff. In accordance with customary practice, the Cleveland station formulated a budget proposal in November 1979 to cover the first quarter of 1980; that is, January, February, and March. It contained a request for only two, not six, new employees. Nemecek further qualified his budget request by noting he would not add to the operations staff until increased shipments in January justified such action.

One of these requested positions, that of a customer service representative, was filled in January with the employment of Leslie Russell. She was laid off a month later after being told that business was slow, but was encouraged to check back. Her personnel record, approved by Nemecek, Thiel, and Casserly, also assigned the layoff to a decline in business and shipment count. Nevertheless, at the hearing, Respondent's witness attributed the dismissal to her slow work performance. Their explanations simply are not credible. Russell had extensive experience in an allied business. Her competency also was evidenced by Nemecek's assigning her to handle an important client. If Respondent's managers wished to avoid embarrassing Russell they could have simply given her a neutral recommendation. There was no need to falsify the Company's internal records as to the cause of her discharge.[9] Thus, her hiring and layoff demonstrate that

[5] Although the record is unclear as to the exact date of Landino's termination, it is certain that he left sometime in the early part of the summer of 1980.

[6] This list is discussed *infra*, in connection with par. 10(g) of the complaint.

[7] The parties agreed to exclude Panacewicz from the voter eligibility list on the ground she was a confidential secretary.

[8] Although the transcript reads that Recek came into the office to go to "work" with Panacewicz, it is apparent that the word "lunch" was intended.

[9] If Respondent did terminate Russell for her slow work habits, then the reason assigned on her termination paper was false. This has particular significance in light of Respondent's subsequent discharge of Alvin Gordy, purportedly for falsifying a timecard. See discussion of the Gordy discharge, *infra*.

Respondent's personnel actions were keyed into the rise and fall of its business activities as measured by the shipment levels.

It is equally clear that, at the time that Nemecek prepared the proposed budget in February, no new hires were projected for the second quarter of 1980 beginning in April, for the number of estimated hours for that quarter fell below those budgeted for the preceding quarter. Sometime after his proposal was submitted, Thiel increased the number of operations hours from 6,186 to 7,226. Yet, this substantial increase was awarded to the Cleveland facility without any written request and at a time when shipments were spiraling downward.[10]

Even if Respondent had followed its normal practice of submitting a supporting memo justifying the need for additional personnel, such a request would have addressed hiring for the second quarter of 1980 beginning in April. Thus, no explanation exists for the absence of a written justification for the six new hires in March, other than the obvious one—the abrupt expansion of the operations work force was undertaken to dissipate the Union's majority.

Respondent's business records demonstrate that net profit declined drastically at the Cleveland station from $20,460 in the first quarter to a net loss of $35,220 in the second quarter of 1980. Contributing to that loss was an increase of approximately $18,000 in operations staff salaries over the amount paid in the first quarter. Respondent does not contest these documented facts. Instead, it counters that operations staff was augmented in response to directives from headquarters ordering that steps be taken to correct inadequate service being offered to customers in its new guaranteed 1-day delivery program. Thus, Respondent points to a sharply worded memo of February 20, 1981, from Respondent's vice president, VanBruwaene, to four regional managers, including Thiel, outlining frequent mistakes being made in servicing clients, and demanding that the regional managers take steps to eliminate these problems. Speculating that a possible response might be to hire more staff, the memo cautioned: "Let the man who says that know that he better be right, because he will get the people and the hours but he also had better be 100%." The memo further advised the regional managers that "What form the effort [to eliminate mistakes] takes, I'll have to leave to your own style of management . . . I expect immediate improvement." VanBruwaene went on to offer his own remedies: "the single biggest [recommendation] is to communicate rapidly, eyeball to eyeball, with every person in your span of control . . . that we cannot accept mistakes . . . we need everyone to be more precise and more careful. . . ."

A later memo dated March 6, from Respondent's president, Robert Brazier, which was circulated to the regional managers, also dealt with eliminating causes for customer dissatisfaction with the guaranteed delivery program. Brazier, too, mentioned several solutions including the possibility of adding more man-hours.

The thrust of both memos is on devising methods to improve the quality of customer service. Neither memo dictates that adding personnel is the only, or most effective, way to achieve this. In light of the memo's strong admonitions and insistence on immediate and perfect results, Thiel's addition of six inexperienced, untrained employees borders on the bizarre. The ineptitude of the new employees did little to remedy errors; rather, it appears they compounded them. Saraniti observed a change for the worse in the quality of customer service after the six were hired. When pressed to explain the change, he acknowledged that he avoided relying on the new employees. Instead, he turned to the seasoned personnel to avoid wasting time and to get direct answers. Hillenbrand provided further unrefuted examples of the mistakes committed by several of the new hires. Meshenberg, for one, quoted a rate of $500 on a shipment to a customer rather than the correct cost of $4,500. It is unclear whether the Company had to absorb the difference. But the issue is whether the client, not Respondent, was satisfied. Johnson also misquoted a shipment rate which resulted in a substantial loss to Respondent. Neither employee was disciplined. There is other uncontradicted evidence that Landino studied during his working hours, that Johnson was an unproductive employee who received no training until months after he was hired, and that Recek was employed without any direction as to what tasks she was to perform. It further strains credulity to believe that Respondent hired Popadich, Meshenberg, and Landino to improve the quality of service when none had any intention of remaining for more than a brief period of time.

An ineluctable conclusion emerges from all the evidence adduced on this issue: as soon as Respondent was made aware that a majority of its operations staff had designated the Union as its collective-bargaining agent, it proceeded to pack the unit with employees upon whom it believed it could count to vote against the Union. Such blatant conduct violates the strictures of Section 8(a)(1). *Suburban Ford, Inc.*, 248 NLRB 364 (1980), enforcement denied 646 F.2d 1244 (8th Cir. 1981); *C. Markus Hardware, Inc.*, 243 NLRB 903 (1979).

B. *Paragraph 10(a)(2)*

At the hearing, the consolidated complaint was amended further to allege that, from March 23, 1980, to the present, Respondent continued to hire employees into the bargaining unit for the purpose of diluting the Union's majority. In particular, the General Counsel urges that Respondent unlawfully replaced Landino, Meshenberg, and Popadich, all of whom left in June with two other part-time employees, Michelle Sabota and Teresa Wintrow.

Although Sabota's employment application made no mention of how she was referred to Airborne, it is likely that she was recruited by Panacewicz, her next-door neighbor. Wintrow's husband, one of two independent truckers at the Cleveland station, was involved in a dis-

[10] Respondent was unable to locate any "budget requests, memos or reports" pertaining to the second quarter hours increase for the Cleveland station, in response to the General Counsel's subpoena. Accordingly, I conclude that no such request existed. The General Counsel's telegram dated April 29, 1981, documenting Airborne's failure to find such a memo subsequent to the hearing, is admitted into evidence as G.C. Exh. 39.

pute with the 16 other company truckdrivers, all of whom were members of Teamsters Local 407. Very close in time to the date on which Teresa Wintrow was hired, the dispute between her husband and the other drivers erupted into a court action which culminated with the issuance of an order prohibiting Wintrow from hauling freight from the Cleveland dock.[11] The nexus between these new hires and persons who presumably were unsympathetic to the Union arouses strong suspicions that Respondent continued to seek out employees with antiunion biases.

There is more than mere suspicion here, however. As noted above, Respondent failed to produce any evidence that budget appropriations were requested to cover the employment of the six workers hired in March. Similarly, no additional documentation was offered to show any written requests for Wintrow or Sabota. Moreover, the business records establish that there was no business growth in June which would justify maintaining the operations staff at its then-inflated level.

Respondent offered no special justification for the employment of these two women. Having engaged in rather transparent actions to dilute the Union's majority in March, a heavier burden devolves upon Respondent to provide some convincing evidence that its unlawful hiring practices did not continue into June. Respondent failed to meet that burden.[12] Accordingly, I conclude that Respondent's hiring of Sabota and Wintrow was part of its ongoing strategy to defeat the Union, should any future election be held.

C. *Paragraph 10(b)*

Paragraph 10(b) of the complaint alleges that on March 1, 1980, Douglas Casserly solicited grievances from an employee. In support of this charge, Hillenbrand testified without contradiction that Casserly telephoned her at her home on Saturday during the course of the union organizational meeting referred to above, and suggested that the employees meet collectively with Nemecek that Monday morning to air their concerns about working conditions.

It is well settled that an employer may not solicit grievances from employees when the purpose of such solicitation is to interfere with the employees' exercise of their Section 7 rights. Here, however, there is insufficient evidence that management knew that the employees had embarked on an organizational effort. Accordingly, I conclude that Casserly's statement to Hillenbrand did not violate the Act and, therefore, this allegation of the complaint should be dismissed.

D. *Paragraph 10(c)*

On the same day that Tanski advised management officials that a majority of the employees had signed union authorization cards, Hillenbrand related without contradiction that Casserly asked her to disclose the names of those employees who had signed.

Casserly's inquiry, which came on the heels of the business agent's refusal to disclose the names of the union supporters, constituted an impermissible inquiry into the union activities and sympathies of its employees in violation of Section 8(a)(1). See *Crown Zellerbach Corporation*, 225 NLRB 911, 912, fn. 6 (1976).

E. *Paragraphs 10(d) through (i)*

In late March or early April, the Union and Respondent agreed to a voter eligibility list for the ensuing election. Alvin Gordy's name was excluded in the mistaken belief that he performed supervisory duties.[13] Soon after this list was devised, Gordy was summoned to a meeting with Thiel, Nemecek, and Casserly. A number of remarks made to him during this hour and one-half, closed-door session gave rise to the allegations in paragraphs 10(d) through (i) of the complaint which issued on June 24, 1980.[14]

At the outset, Thiel asked Gordy why he and other employees joined the Union and whether Hillenbrand had prodded him to sign a card. Thiel further remarked that he could not understand why Gordy would support the Union; that he had too much to lose by doing so. He amplified this latter remark by referring to the possible loss of profit-sharing and health benefits to all the employees, but particularly to Sekic, the most senior member in operations. Thiel then urged Gordy to warn the employees that these benefits might be lost if the Union won the election.

During the same meeting, Thiel explained to Gordy that the Company had taken the position he was ineligible to vote and that since neither Hillenbrand nor the Union protested, they had, in fact, "sold him out." However, Thiel reassured Gordy that he was on the winning team, like it or not. To illustrate his point, Thiel drew a line down the center of a blank sheet, listing on one side the names of those employees who supported the Union, and, on the other, those opposed.[15] Gordy saw the listed

[11] Wintrow is no longer employed by Respondent.

[12] In its brief, Respondent moved to reopen the record so that it might adduce additional evidence of legitimate business justification in the event I found an inference of union animus motivating the employment of Sabota and Wintrow. At the hearing, Respondent was advised it would be granted an opportunity to present additional evidence if it saw fit to do so, but that opportunity should have been taken before the hearing concluded, not in its brief after the record was completed. Moreover, I do not understand that the General Counsel's theory is that any new hire would be suspect. Rather, the employment of Sabota and Wintrow was challenged because they were selected specifically as likely opponents of the Union. Therefore, further production of proposed evidence showing similar employment practices at other facilities, as Respondent proposed, would not be particularly probative.

[13] I surmise that Gordy's exclusion was a *quid pro quo* for that of Pancewicz. At the hearing, the parties stipulated that Gordy was a statutory employee.

[14] No witness for Respondent controverted Gordy's version of this meeting. However, Respondent argues that Gordy's account of his subsequent discharge, as detailed below, is so riddled with contradictions as to make all of his testimony untrustworthy. Even if the contradictions to which Respondent alludes exist, they are so minor that they by no means demonstrate that Gordy should be wholly discredited. To the contrary, he impressed me as an honest witness. In appraising his credibility, I place particular weight on the fact that at the time Gordy provided information to a Board agent with respect to management's conduct, he had good reason to feel alienated from the Union which had agreed to his exclusion from the eligibility list.

[15] Frey, Hillenbrand, Kaznoch, and Parete, Sekic, were listed as union supporters. Johnson, Kasper, Landino, Meshenberg, and Popadich were listed as opponents.

names and subsequently related this incident to Hillenbrand.

Gordy also testified without controversy about several other private conversations with Nemecek in late March or early April. On one occasion, Nemecek asked Gordy if any employee had bothered him about being outside the bargaining unit, and then asked him to report any information he might overhear about the Union. Another time, Nemecek asked if Gordy had been invited to attend a union meeting that evening. Subsequently, Nemecek reported to him that the employees spent their time at the meeting drinking and complaining about the Company.

Respondent argues that, since Gordy was ineligible to vote in the election in the mistaken belief he was a member of management, its statements to him could not have been coercive. Respondent's argument has little merit, for the statements at issue here reveal that Airborne's officials never regarded Gordy as anything but an employee.

Clearly, Gordy was asked to serve as an informant because Nemecek knew he would be accepted as a peer by his fellow employees. Similarly, Gordy would not have been asked if he were invited to a union meeting unless management believed he would be included with the other employees. Moreover, management knew that Gordy continued to punch a timeclock, and was hourly paid just like its other rank-and-file employees. Thus, although Gordy was incorrectly deleted from the voter eligibility list, management did not have any illusions about his station. He remained a statutory employee entitled under the Act to engage or refrain from engaging in concerted activities. Taking advantage of the ambiguity in his status, management attempted to cement Gordy's loyalty to it and to disaffect him from the Union. Further, Respondent's agent implied that he might lose benefits, suggested that he tell the other employees that they, too, might lose benefits if the Union prevailed, and asked him to inform on his coworkers. By so doing, Respondent violated Section 8(a)(1) of the Act. Compare *Cato Show Printing Co., Inc.*, 219 NLRB 739, 740 (1975).

The considerations which govern the disposition of the above allegations apply with greater force to paragraph 10(g), for in this instance, Gordy described Thiel's list to Hillenbrand. As the employee who had refused to divulge the names of those who had signed union authorization cards, she would assume that Thiel's information had been obtained covertly. In designating who was pro- or antiunion, Thiel conveyed the impression to Gordy and Hillenbrand that he was engaged in unlawful surveillance of the employees' union activities. *Arrow Automotive Industries, Inc.*, 256 NLRB 1027 (1981); *Hoover, Inc.*, 240 NLRB 593, 606 (1979).

F. *Paragraphs 10(j) and 11*

On April 15, 1980, Rod Shively, Respondent's corporate manager for employee relations, met with groups of employees at the Cleveland station to present management's position *vis-a-vis* unionization and, in particular, to scotch rumors that employees would suffer reprisals if they voted for the Teamsters in the forthcoming election.

As employee Parete recalled, in the meeting which he and Cindy Kaznoch attended, Shively stated that there had been a breakdown in communications which management was trying to rectify; that the Company preferred not to deal with the Union's business agent, Tanski, because of his abrasive personality, and that the employees should bring their complaints to the Company rather than going through the Union. Parete further testified that Shively addressed him specifically stating, "We are going to try to get you some help in here."

By way of background, Parete explained that, on several occasions some months previously when his workload was particularly heavy, he requested assistance in the performance of his job on the international shipments desk. His request was denied on the grounds that the number of such shipments in the latter part of January was insufficient to warrant additional personnel. Between the time of his last request, and the date of the meeting with Shively, the number of international shipments had decreased from a peak of 15 to 18 during the last quarter of 1979 to 10 to 12 shipments a night.

Shively offered a different version of his exchange with Parete. Shively stated that Parete raised the problem that no other employee was trained to perform his duties, which, according to Shively, was contrary to the practice in most of Respondent's larger facilities. However, Shively denied that he promised Parete any relief in this regard. However, sometime after this meeting, newly hired, part-time employee Gail Recek was assigned to provide backup assistance to Parete.

In crediting Parete's account, I am influenced by Shively's acknowledgment that his duties require him to make frequent visits to Respondent's many facilities. For him, the meeting with the Cleveland employees was unremarkable so that he would have no special reason to remember with exactitude the details of one such meeting. For Parete, however, such a meeting was singular and he would be far more likely to remember with clarity the details of the conversation, especially the portion which concerned him exclusively.

The promise of backup assistance would be relatively innocuous were it not for the context in which the remark was made. Since the number of international shipments had decreased by mid-April and was well below the level which management had indicated would warrant additional help, there was no legitimate business justification for the assignment of an aide to Parete at that time. Further, the initiation of this promise by Shively, who was merely visiting the facility and had no responsibility for job assignments, but who was responsible for promoting goodwill between management and labor, is more than suspicious.

In these circumstances, Respondent's promise to assign Parete an assistant and the subsequent fulfillment of that promise can only be viewed as an effort to mollify a known union supporter and demonstrate to him that it was Respondent, not the Union, that was in a position to resolve his dissatisfactions with his working conditions. Such conduct is proscribed by Section 8(a)(1). See *General Rental Co. d/b/a Avis Rent-A-Car*, 247 NLRB 1452 (1980); *Rexair, Inc.*, 243 NLRB 876, 883 (1979).

G. *Paragraphs 10(k), (l), and 12*

The facts alleged in paragraphs 10(k) and (l) of the complaint are not disputed. On April 21, Respondent offered a supervisory position first to Hillenbrand and then, when she refused it, to Kaznoch, who accepted it. The job had been vacated some 3 month earlier when Casserly became station manager. At that time, Hillenbrand suggested her brother-in-law for the supervisory post but Operations Manager Wysocki rejected her recommendation, observing that it was company policy not to hire relatives or close friends.

For a period of time between January and March, Casserly performed both the supervisor's and the station manager's functions. In early March, a man recruited from outside the Company was hired as operations supervisor but quit 2 weeks later. Thereafter, two other applicants, Greg Kubiak and William Lindsay, each of whom had supervisory experience with firms whose work was similar to Respondent's, were interviewed for the position. Nemecek testified that Kubiak was rejected because he lacked maturity. Yet, Nemecek drafted a memo stating that "Kubiak is a good prospect for an operations supervisor." Similarly, Nemecek discounted Lindsay who had 7 years experience as a dock foreman and terminal operations manager because he lacked "strength" to control the drivers and operations staff.

Instead, on April 21, Respondent offered the promotion to Hillenbrand. At the same time, she was assured that the other supervisors had agreed to retain their shifts rather than rotate as was customary so that Hillenbrand, who had a family, would be able to work only the day shift.

In asserting that the offer of a supervisory job to Hillenbrand was unlawful, the General Counsel does not take the position that she was unqualified for the position. Indeed, her demeanor and forthrightness during this proceeding demonstrated her capacity for leadership. But the issue is not resolved solely by an inquiry into whether or not Hillenbrand was deserving of the opportunity presented to her. Rather, the proper test is whether the employer, confronted by a union organizational campaign, proceeded with the bestowal of a benefit in the same manner it would have had the employee not participated in union activity. See, e.g., *Gold Circle Department Stores, a Division of Federated Department Stores, Inc.*, 207 NLRB 1005, 1014 (1973). Here, a number of factors compel the conclusion that Respondent offered the promotion to Hillenbrand and then to Kaznoch as a means of further diluting the Union's majority.

The timing of these promotions is of particular significance in revealing Respondent's unlawful conduct. Hillenbrand was not offered the position until late April. Surely her talents were visible in January when the position was first vacated. Yet, Respondent offered no explanation for its failure to offer the promotion at any time prior to the onset of the Union's campaign.

Further, Respondent claimed that supervisory experience was an important consideration in selecting Kaznoch for the post. Nevertheless, it selected Hillenbrand who had no such experience after bypassing two candidates with extensive supervisory experience in parallel trades. The reasons offered for rejecting the two outside applicants were totally unconvincing, particularly in light of Nemecek's written comment that one of the two was "a good prospect."

On the day after Hillenbrand refused the promotion, the job was offered to Kaznoch, a rate clerk who had been with the Company only 5 months and whose only experience with it was as a rate clerk. Respondent purportedly selected Kaznoch because of her previous experience in the military as a sergeant performing computer and dispatch duties. However, Kaznoch acknowledged that she had little real authority for directing the work of others while in the Army. If experience were a factor of real value to Respondent, then it is even more inexplicable why Respondent would have preferred Kaznoch, a fairly unknown and unproven worker, to the two outside applicants, or to other employees within the Company of proven ability such as Sejik or Parete. Moreover, the appointment of one so lacking in expertise is even more inconsistent with Respondent's decision to improve customer service by adding additional employees. Since Kaznoch had no training in duties other than those of a rate clerk, she was an unlikely candidate to supervise the work of new employees in the operations division who were even more inexperienced than she.

Moreover, according to several employee-witnesses, Kaznoch did not exhibit the personal qualities which had commended Hillenbrand to management's attention. For example, Parete testified that Kaznoch occasionally burst into tears with vexation at the job.[16] Such behavior hardly demonstrates the qualities which Nemecek viewed as so important for the job that he rejected a candidate who purportedly lacked these assets although he had served as a dispatcher terminal manager for 7 years with another firm.

The only plausible explanation for Respondent's selection of Kaznoch emerges from Parete's testimony concerning his and Kaznoch's meeting with Shively on April 15, little more than a week before the offer. He related that Kaznoch boldly told Shively that she was not to be taken for granted or conned by either side. Such remarks certainly would have conveyed to management that Kaznoch's loyalties to the Union were less than firm. In short, she could be, and was, in fact, persuaded to shift her allegiance.

Had Respondent done nothing more than offer supervisory positions to union adherents during a preelection period, the resolution of the issue raised by these allegations might be more problematic. However, the promises of promotions were not made in a vacuum; they came within weeks after Respondent deliberately expanded its operations staff to co-opt the Union's majority and just 2 weeks before the scheduled election. By promoting Hillenbrand, Respondent could not only fill a supervisory position, but also silence the leading union proponent, thereby demoralizing the other employees. By promoting either Hillenbrand or Kaznoch, Respondent could ensure another defection from the Union's ranks and, at the

[16] Parete seemed very reluctant to disparage Kaznoch and took pains to couple his remarks with several kind comments about her personal behavior outside the office. However, his innate honesty ultimately overcame his scruples about criticizing Kaznoch.

same time, offset the cost of inflating the division with six additional employees. Given these factors, the General Counsel has established that the offers of promotions to Hillenbrand and Kaznoch and the actual promotion of Kaznoch violated the rights guaranteed to employees under the Act. See *Tennessee Cartage Co., Inc.*, 250 NLRB 112, 115 (1980); *Hospitality Motor, Inc.*, 249 NLRB 1036, 1037 (1980).

H. *Paragraphs 10(m) and (n)*

On April 29, 1980, Respondent was advised by counsel that a mailgram was received from the Board announcing the postponement of the election as a result of the Union's filing unfair labor practice charges. Respondent was directed to post the mailgram so that employees would be advised of the election's postponement.

In order to comply with this directive, but not having received the mailgram itself, Respondent posted a memorandum on the office bulletin board and in the employees' restrooms signed by Thiel to "All Cleveland Customer Service and Clerical Employees." The memo contained not only the message required by the Board, but also some additional campaign rhetoric chiding the Union for obstructing the election.

Hillenbrand twice removed the notice from the women's restroom, whereupon Thiel told her he had been ordered to post it by the NLRB and that if she removed it again he would report her to "the appropriate government agency." The following day, Thiel sent Hillenbrand a confidential memorandum explaining that the Board had instructed Respondent to notify the employees that the election would not be held. The memo concluded by warning Hillenbrand again that any further interference would be reported to the appropriate government agencies.

The General Counsel does not contend that the notice was unlawful. Rather, Respondent is accused of improperly implying that the Board sanctioned its campaign material.

Obviously, it would have been preferable for Respondent to post the Board's mailgram had it reached the Cleveland station in time to alert the employees of the stalled election. However, the posted document was so plainly generated by Respondent that it is inconceivable that any employee would be misled as to its source. Any reasonable person could distinguish the information which the Board required to be announced from that which the Company appended. Not even a naive employee would be beguiled into believing that the Board had authorized Respondent's propaganda. Thus, I am convinced that Thiel's comment did not jeopardize the Board's neutrality or create the impression that the Board's imprimatur was stamped upon the memo.

Neither do I regard Respondent's admonition to Hillenbrand as unlawful. I am persuaded that Respondent posted the memo believing that it was responsible for notifying its employees of the election postponement. When Hillenbrand persisted in removing the announcement, Respondent reasonably feared that it might be held culpable for failing to comply with the Board's directive. Hillenbrand was not warned of impending discipline by Respondent, only that her actions would be reported to the Board. This interdiction does not offend the Act.

I. *Paragraphs 10(o) and (p)*

While talking with Hillenbrand in May 1980, Wysocki told her he was considering transferring from sales to operations and wondered if she thought "the situation" would change if he did so. When she asked what he meant by "the situation," Wysocki replied, "You know, the way things are out there." Hillenbrand retorted, "If you mean will we drop this Union, the answer is no" to which Wysocki said that she should do what she had to do.

The General Counsel characterizes this dialog as an attempt by Respondent to unlawfully interrogate an employee about her union sympathies. I disagree. The exchange was casual and undevious as illustrated by Wysocki's comment that Hillenbrand must conduct herself as she best saw fit. It is a strained interpretation to construe Wysocki's comments as a suggestion that employee dissatisfaction might be redressed by his becoming operations chief in return for a cessation of union activity.

During the same meeting, Wysocki also told Hillenbrand that he might be prevented from implementing several programs because of the Union, and be unable to utilize her in specific positions if the Union compelled him to abide by seniority.

Although Wysocki's remarks came after the election was canceled, a respondent's postelection conduct may be unlawful nonetheless where it is designed to give it an advantage in the event of future union activity. See *Raley's Inc.*, 236 NLRB 971, 983 (1978). Here, Wysocki clearly was implying that the Union stood in the way of Hillenbrand's personal advancement. Further, like the earlier offer of a supervisory post, his comments were part of Respondent's continuing efforts to dissuade her from adhering to the Union. As such, the statements violated Section 8(a)(1).

J. *Paragraph 10(q)*

The amended complaint, alleging that Respondent, through its agent, Mrs. Richard Thiel, solicited an employee for the purpose of voting against the Union, is based on the credited testimony of Dianne Popadich, as set forth in the discussion of the unit-packing issue above.

Respondent disclaims responsibility for Mrs. Thiel's remarks, arguing that there is no evidence of any agency relationship and that it never ratified her acts. Respondent's arguments are incorrect.

Under Board precedent, the test of whether Karen Thiel served as Respondent's agent turns on whether "under all the circumstances the employees could reasonably believe that [she] was reflecting company policy, and speaking and acting for management. . . ." *Aircraft Plating Company, Inc.*, 213 NLRB 664 (1974), citing *American Door Company, Inc.*, 181 NLRB 37, 43 (1970).

Popadich had good reason to believe that Karen Thiel was acting pursuant to Respondent's authority since she was the wife of Respondent's regional manager. Moreover, Karen Thiel's overture to Popadich, which was

followed by telephone calls from Richard Thiel and Nemecek shortly thereafter, constitutes a ratification of Karen Thiel's efforts on the Company's behalf. Popadich's rapid employment, despite the fact that she was inexperienced and expressed doubts about how long she would stay, is evidence of Respondent's effort to procure from her an antiunion vote. Whether or not Popadich was actually affected by the circumstances attending her recruitment and hire is inconsequential. What is relevant is that Respondent's conduct was reasonably calculated to have the effect of interfering with her right to support or refrain from supporting the Union. See *N.L.R.B.* v. *Exchange Parts Co.*, 375 U.S. 405, 409 (1964).

K. *Consolidated Complaint, Paragraphs 6 and 7*

In July 1980, Wysocki, then operations manager, had several private conversations with Gordy which reveal a shift and hardening in Respondent's attitude toward him. Gordy testified, without controversy, that Wysocki asked him whether anyone in the Union had suggested restoring his name to the voter eligibility list. He followed this by asking Gordy how he would vote if such a situation arose. Wysocki further admitted that he did not favor the Union but, if asked, would deny that he had made any such remark.

During this same discussion, Gordy attested that Wysocki also asked him if anyone from the Board had approached him with respect to an investigation; that, if that situation occurred, Gordy should contact Wysocki or the Company's attorney so that they might participate in the interview. Wysocki added that Gordy need not get involved in such a proceeding for he had a bright and promising future with the Company.

Wysocki denied Gordy's account. Instead, he asserted that Gordy asked him what would happen if the NLRB requested a statement from him. Wysocki responded that he was unsure whether Gordy was required to give one but would consult with Respondent's attorney if Gordy so desired.

By the time this conversation occurred, the original complaint of June 24 had issued containing six allegations attributable to Gordy. Moreover, the election, from which Gordy was excluded, had been blocked by the Union's filing unfair labor practice charges. Given these events, Respondent no longer could feel sanguine about Gordy's loyalty to it or that he would be excluded from the bargaining unit. Clearly, Wysocki's inquiry was put to Gordy as an employee. As such it was unlawful interrogation of the most classic form, condemned under the Act as a violation of Section 8(a)(1).

Wysocki's recollection seems hazy about the specifics of his conversation with Gordy as to contacts with a Board investigator. He was uncertain when the exchange took place nor could he clearly recall the words which were spoken. More important, it is improbable that Gordy would ask Wysocki's advice about talking to an NLRB investigator when he had given a sworn statement to a Board agent several months earlier. I conclude that Wysocki introduced this subject and, by suggesting that Gordy restrict his communications with the Board and linking such restraint to his future with the Company, interfered with his access to Board process in violation of Section 8(a)(1).

At another time in July, Gordy asked Wysocki for a raise. He recalled that Wysocki responded that the "Union business had put a freeze on all the salaries" and that the Cleveland budget was not prepared, but promised to get back to him on it. Wysocki put his reply in somewhat different terms. He told Gordy that he was not sure a raise could be granted during an organizational effort and that if one could be granted, it would have to be programmed into the budget for the subsequent quarter.[17]

The difference between the two accounts is slight. In determining which is the more precise version, I bear in mind that Gordy acknowledged that Wysocki assured him he would pursue the matter. In other words, Wysocki expressed uncertainty as to what the proprieties were during a union campaign. Viewed in this light, Wysocki does not appear to have blamed the Union for a wage freeze. Rather, he seems to have suggested that he could take no action until he made further inquiry. Therefore, his remarks cannot be construed as unlawful.

IV. THE TERMINATION OF ALVIN GORDY

Gordy began working for Respondent in December 1979 as a rate clerk and was promoted several months later to operations agent. During the course of his employment he received raises on three occasions. Until September 20, 1980, Gordy had an unblemished disciplinary record. However, on that date, he arrived late to work. According to Respondent, Gordy then deliberately falsified his timecard to show an earlier arrival time. Respondent regarded this conduct as so serious as to warrant discharge.

Gordy's recollection of the sequence of events that day differed considerably from that of Respondent's witnesses. He recalled that at approximately 8'clock that morning, while on his way to work, he telephoned Kaznoch to tell her he was going to buy some donuts and coffee and would be a few minutes late. After making his purchase, he returned to his car and drove only a short distance when his car broke down. Gordy attempted without success to call Doug Casserly at home. He then called Kaznoch at what he thought was 8:30 a.m. to advise her of his automobile problems and assure her he would get to work as soon as his father could pick him up. Upon his arrival at the facility, Gordy neglected to punch in his timecard. However, at the end of his shift, following normal procedure, he estimated his arrival time at 8:40 a.m. Because no supervisor was present to verify his time, he left the card with an explanatory note for Casserly's approval mentioning that he had estimated his time. In addition, he left a shift report which also stated an estimated time of arrival.

According to Kaznoch, Gordy did not reach the plant until 9:20 or 9:30. She confirmed the contents of both of Gordy's telephone calls, but contradicted his estimates of the times they were made. She placed his first call at

[17] Regardless of which is the more accurate version, it is apparent that here, too, Wysocki was dealing with Gordy as an employee since there would be no problem in granting a pay increase to a supervisor.

8:20 a.m. and the second at 8:35. At 8:50, when Gordy had not arrived, Kaznoch telephoned Wysocki at his home to obtain advice on the handling of a certain matter with which she was unfamiliar. When Wysocki, aware of the late hour, asked where Gordy was, Kaznoch explained that he had been delayed by car problems. Because Kaznoch's mother was waiting for her outside the station, she was anxious about Gordy's tardiness and observed that it was approximately 9:20 or 9:30 when he did appear.

On Monday morning, September 23, Wysocki happened to pass Casserly's office and inquired as to Gordy's time of arrival. Learning that Gordy had written in 8:40 a.m. and knowing that this could not be correct, Wysocki asked Kaznoch to confirm Gordy's starting time. She responded by memo that it was 9:30 a.m. The following day, Wysocki, mindful of the employment discrimination implications of firing Gordy, who is black, contacted corporate headquarters in Seattle to consult with them concerning the possible termination. Then, Wysocki summoned Gordy to his office. Upon confronting him with the timecard disparity, Wysocki testified that Gordy insisted that to his best recollection he arrived at 8:40 a.m.

Discussion and Conclusions

Gordy's discharge poses the problem of discerning Respondent's motivation where there is, on the one hand, evidence of union animus, and, on the other, proffered business justification. In dual motive cases such as this, the Board has formulated a two-step process to assess the employer's asserted grounds. Initially, the General Counsel must make a *prima facie* showing that the protected conduct of the discharged employee was a motivating factor in the employer's decision. Once this is accomplished, the burden shifts to the employer to demonstrate by a preponderance of the evidence that it would have reached the same decision in the absence of the employee's protected conduct. *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980). Accord: *N.L.R.B.* v. *Eastern Smelting & Refining Corp.*, 598 F.2d 666 (1st Cir. 1979).[18]

In establishing its *prima facie* case, the General Counsel submits and I concur that Gordy's collision course with management must be traced to events which began in March 1980. As discussed in greater detail above, Gordy signed a union card, but was excluded subsequently from voting in the election. At the hearing, however, the parties stipulated that he was a statutory employee. After he was excluded from the bargaining unit, management attempted to woo him into its camp. Taking him into his confidence, Nemecek even asked him to report on his fellow employees' union activities. Gordy did not pursue these suggestions. Instead, he related his conversations with Thiel and Nemecek to the Board's investigative agent which resulted in a series of allegations in the complaint issued on June 24. Although Gordy's name did not appear in the complaint, his identity as the source of the allegations in paragraphs 10(d) through 10(i) had to be known to Respondent. Management's chagrin at Gordy's disclosures is not difficult to imagine.

After issuance of the complaint and with the election blocked by the filing of the unfair labor practice charges, management apparently had second thoughts about Gordy's exclusion from the list of voters. This accounts for Wysocki's questioning Gordy in July as to whether any effort had been made to include him on the eligibility list and how Gordy would react if he were permitted to vote.

Given this sequence of events, the dismissal of an employee with no prior disciplinary problems who had a "promising future" with the Company appears to be a sanction whose severity far exceeds the first offense that ostensibly gave rise to it. In these circumstances, an inference is warranted that Respondent's decision was significantly affected by discriminatory motives.

In defense, Respondent contends that Gordy deliberately and willfully falsified his timecard and that such misconduct is uniformly treated as cause for discharge. After evaluating the relevant evidence adduced by the parties, I conclude that Respondent has failed to make a convincing case that it would have terminated Gordy had it not been for his protected activity.

Respondent attempts to prove that Gordy purposely doctored his arrival time and then lied about it to Wysocki by showing that he offered contradictory testimony at the hearing in this matter. Toward this end, Respondent fastens upon the following purported contradictions: On direct examination, Gordy testified that when he first called Kaznoch, he said, "I would be maybe a couple of minutes late because I stopped to get some coffee and donuts. . . ." After making his purchases, he "drove for maybe a foot or so and the car broke down a couple of feet . . . out of the parking lot . . . I walked down the street to a telephone" to call Casserly. Respondent also pointed out that Gordy stated he believed his arrival time was 8:40 a.m. "Because on my way from where the car had broke down . . . I was listening to the radio and they had said . . . at the time it was 8:30." Gordy added that he left work that evening "around 7:30, something like that."

During cross-examination, Gordy said he called from the donut shop but subsequently explained that the call was not from inside the shop, but from a telephone booth on a nearby corner. He also stated that after leaving the donut shop he drove to the next corner "which is not no more than a foot. It is a small block." In response to counsel's question, "Do you know who Gustav Bielert is?" Gordy answered, "No" but then added, "He [Bielert] was not there that morning." Finally, Gordy acknowledged that he might have left work at 5:45 p.m. as his timecard actually showed.

On reviewing the record, I am unable to attach the same sinister significance to Gordy's testimony as does Respondent. There is nothing diabolic in his saying he called from the donut shop, whether before or after he made his purchase, when in fact what he intended to convey was that he called from the vicinity of that store. I further believe that Gordy was referring to a foot or a

[18] There is often a thin line between dual-motive and pretext cases. In either event, I see no injustice done by adopting a burden-shifting approach to the instant facts. See *N.L.R.B.* v. *Charles Batchelder Co., Inc.*, 646 F.2d 33 (2d Cir. 1981) (concurring opinion).

few feet in very loose and figurative sense. While he may have a distorted concept of how long a block is, he consistently maintained that his car broke down shortly after he drove out of the parking lot, a fact which Respondent does not dispute. Further, given Gordy's explanation that Bielert was not the first person he saw when he arrived at the plant, it becomes apparent that he misunderstood counsel's initial question, and assumed he was asked if he "saw" Bielert, not whether he "knew" him. It is ludicrous to assume that Gordy purposely lied about knowing Bielert when he was aware that the truth could easily be established. Finally, Gordy merely estimated his departure time. There is little reason why he should recall his departure time with exactitude since his concern with the events of that day were concentrated on the time of his arrival. In short, Respondent has made proverbial mountains out of molehills. The discrepancies in Gordy's testimony are minor ones which any layman might make who is unaccustomed to the niceties of the courtroom. Indeed, the fact that Gordy framed several of his responses somewhat differently on cross-examination works in his favor for it shows that his testimony was unrehearsed.

The issue is not whether Gordy arrived at 8:40 a.m., but whether he honestly believed he did. Although Gordy was convinced that he arrived at that time, he pointed out to Wysocki that he estimated the time and had documented this in his cover note to Casserly. It made no sense for Wysocki to assume that Gordy knowingly engaged in a crude deception when he was well aware that Cindy Kaznoch was in a position to verify his time of arrival. Moreover, if Respondent had been less eager to condemn Gordy, it could have found much in his conduct that morning to commend. Not every employee would have gone to the lengths that Gordy did to twice call the person on duty to report his delay, to attempt to call his supervisor at home and, when his car broke down, get to work anyway by having his father drive him. These are not the acts of a deceitful employee.

Wysocki conceded that Gordy told him he was merely estimating his time. Moreover, Gordy hardly would have suggested that Wysocki review the note he left for Casserly if it did not contain the message that his arrival time was only estimated. If Gordy's timekeeping was of such paramount importance to Respondent, it is incredible that neither Gordy's note to Casserly nor his shift report was preserved and produced at the hearing.

The second leg of Respondent's defense is that it has consistently terminated employees who were discovered to have falsified business records. However, the examples Respondent offered to establish this consistent disciplinary code do not persuade. They involved two salespersons, Nancy Way and Dean Carcello, whose transgressions were so flagrant and demonstrably false that they bear no comparison to Gordy's case.

Both of these individuals represented in writing that they visited customers, when, in fact, Respondent's supervisors determined conclusively that no such visits were made. Their defalcations were multiple and threatened Respondent with a loss of orders, if not clients. Moreover, Carcello had already received a disciplinary warning for poor work performance. The termination of another employee, Cornelius Edwards, also has little relevance to Gordy's situation. Edwards failed to report to work one day and then failed to supply proof to support his alibi that he had been incarcerated. When Wysocki pursued his story, he was unable to obtain verification. Here, too, Respondent terminated the employee only after attaining unassailable evidence of dishonesty. In contrast, Respondent's case against Gordy was based on nothing more than supposition that he had willfully fabricated. Although Respondent's disciplinary code does not dictate discharge for first offenses, Wysocki maintained that he felt compelled to discharge Gordy because he could never again trust him to work alone on a Saturday. This does not satisfactorily answer why Gordy, with no disciplinary history, could not have been given a less severe sanction and another opportunity to prove himself. Wysocki did not have to trust him. Gordy's timecards and information from the employee whom Gordy relieved would provide adequate safeguards against possible future abuses.

In sum, Respondent's rationalizations for Gordy's termination do not withstand scrutiny. In light of the defects in Respondent's asserted reasons, I conclude that Respondent has failed to prove that it would have terminated Gordy if he had not given an affidavit to a Board agent which resulted in a series of charges against the Company, and which demonstrated that he could not be counted on to support the management team. The Act's protections clearly extend to those, like Gordy, who give sworn statements to field examiners investigating unfair labor practice charges. *N.L.R.B.* v. *Scrivener, d/b/a AA Electric Co.*, 405 U.S. 117 (1972). It follows that, by retaliating against Gordy for providing evidence of Respondent's wrongdoing and thereby ridding itself of a likely union supporter, Respondent violated Section 8(a)(1), (3), and (4) of the Act.

V. THE REFUSAL TO BARGAIN

A. *The Appropriate Unit*

There is no dispute as to the authenticity of the employees' signatures on the seven authorization cards admitted into evidence, nor that this number constituted more than a majority of Respondent's employees in the operations division on March 3, the date the Union sought recognition and bargaining.[19] Although Respondent did not challenge the validity of the unit description in stipulating to a voter eligibility list, subsequently, its answer to the complaint denied the appropriateness of the identical unit. At the hearing, Respondent appeared to suggest that the unit also should include personnel in its sales division.

However, the Board has never held that the unit designated must be the only, or the most appropriate one,[20]

[19] Even if Panacewicz, whom the General Counsel contends served as a confidential secretary, were included with the unit, the number of employees in the operations division totaled no more than nine.

[20] See *Morand Brothers Beverage Co., et al.* 91 NLRB 409 (1950).

as long as the unit sought includes an identifiable group of employees who share a community of interests. There is sufficient evidence of record that the earmarks of an appropriate unit are present here.

The employees perform integrated duties requiring related skills having to do with the transportation of air freight. Each shift had the same hours, and they all punched a timeclock and were hourly paid. Moreover, they worked within physical proximity to one another within the confines of one building, and were under the supervision of the same officials.

By way of contrast, the sales personnel were engaged in a different function—selling the Company's services. This required them to spend most of their workweek outside the station. They report to the sales, not the operations, supervisor. When they were in the office, which was generally only on Fridays, they shared a separate office. They did not punch a timeclock, were paid a salary plus commission, and were provided cars for both business and personal use.

Given the common tasks and related working conditions of the operations personnel, and the distinctions which exist between their terms of employment and those of the salespersons, I find the unit described in the complaint is appropriate. Thus, when the Union sought recognition and bargaining on March 3, it was the validly designated representative of a majority of employees in an appropriate unit.

B. *A Bargaining Order Is Needed*

There is no dispute that Respondent refused to honor the Union's bargaining request. The question remains, however, whether in the circumstances of this case, a remedial bargaining order is warranted under the principles enunciated in *N.L.R.B.* v. *Gissel Packing Co., Inc., supra.*

In *Gissel*, a unanimous Supreme Court affirmed the Board's authority to issue a bargaining order not only in exceptional cases marked by outrageous and pervasive unfair labor practices, but also in less extraordinary cases where there are fewer "pervasive practices which nonetheless still have the tendency to undermine majority strength and impede the election process." *Id.* at 614. Applying these principles to the present case, I am convinced that a bargaining order is warranted and necessary.

As shown by the findings made above, within a week of the date the Union's demanded recognition based on its claim of majority support, Respondent embarked on a deliberate course of vitiating that majority by a variety of methods. Its most egregious tactic was to augment the bargaining unit with superfluous employees selected especially for their opposition to the Union. The Board has consistently viewed such conduct as a serious impediment to a fair election. See, e.g., *Suburban Ford, Inc., supra* at 374; *Orlando Paper Co., Inc.*, 197 NLRB 380, 388–389 (1972); enfg. 480 F.2d 1200 (5th Cir. 1973). Respondent's efforts to derail the election process did not stop with unit packing, however. It also attempted to dilute the Union's majority by promoting the leading union advocate to a supervisory post. When that manipulation failed, it simply subverted another member of the bargaining unit by awarding her the same position. Beyond that, by discharging Alvin Gordy, Respondent ridded the bargaining unit of still another affiliate and, at the same time, purged from its ranks an employee who it came to regard as a fifth columnist.

Respondent committed numerous other unfair labor practices in the weeks prior to the election, including interrogating employees about their union sympathies, promising benefits, threatening lost opportunities should the Union prevail, and creating the impression of surveillance. And after the election was blocked, Respondent continued to engage in coercive conduct. In one form or another, these practices surely would tend to impact on virtually every employee in a unit as small as the one involved herein. Taken collectively, Respondent's unfair labor practices are of such extensive and pervasive proportions as to fall at least within the second category of cases described in *Gissel* as "less pervasive practices which nonetheless still have a tendency to undermine majority strength and impede the election process." *Id.* at 614.

Further, I do not believe that the use of traditional remedies would serve to erase the continuing effects of Respondent's prior acts or definitely ensure that a fair election could be held. Employees expressly hired to thwart the Union continue to work at Airborne as daily reminders of Respondent's hostility to unionization. Their numbers might be sufficient to neutralize the votes of those employees who still support the Union, thereby causing such an election to be an exercise in futility. Moreover, Gordy's discharge, months after the Union's campaign began, demonstrates Respondent's continuing opposition to union activity and its willingness to retaliate against those whom it considers disloyal. Thus, Gordy's unwarranted termination leaves a residue which cannot be erased simply by reinstating him. Further, Nemecek and Wysocki, who as highly placed agents of Respondent, committed many of the unfair labor practices cataloged above, are still managing the Cleveland station. Their propensity to overstep the bounds of appropriate conduct heighten the possibility that statutory violations may recur.

Respondent submits that the Board has a responsibility to look not only to the past but also to consider whether the present conditions at the plant are still so contaminated as to warrant a bargaining order. In this regard, Respondent points to a substantially high turnover among the operations employees, as grounds for arguing that the issuance of a bargaining order would deprive the current work force of exercising its free choice through an election.

At the time of the hearing, five of the seven employees who signed cards in a bargaining unit of nine remain in the Company's employ.[21] Among those individuals expressly hired to pack the unit, four are still working at Airborne.[22] These numbers do not reflect much instabil-

[21] These are Frey, Hillenbrand, Malovic, Parete, and Sekic. Gordy's reinstatement, of course, brings the number to six. The seventh, Kaznoch, was promoted out of the unit.

[22] Johnson, Kasper, Recek, and Sabota joined Panacewicz and Smith as union opponents.

ity. Moreover, those hired after March 10 were not replacements but accretions to the existing operations staff expressly employed for discriminatory reasons. Even assuming there was evidence of significant turnover, Board precedent dictates that I give it little or no weight. *Justak Brothers and Company, Inc.*, 253 NLRB 1054 (1980). To take such a factor into account would merely afford "an added inducement to the employer to indulge in unfair labor practices in order to defeat the union in an election. He will have as an ally, in addition to the attrition of union support inevitably springing from delay in accomplishing results, the fact that turnover itself will help him, so that the longer he can hold out the better his chances of victory will be." *Justak Brothers, supra*, quoting *N.L.R.B.* v. *L. R. Foster Co.*, 418 F.2d 1, 5 (9th Cir. 1969), cert. denied 397 U.S. 990 (1970).

In sum, I conclude in light of the nature and number of Respondent's unfair labor practices "that the possibility of erasing the effects of past practices and of insuring a fair election . . . is slight and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order. . . ." *Gissel Packing Co., supra* at 614–615.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of the Act:

> All full-time and regular part-time operations agents, customer service representatives, rate clerks, operations clerks, and billing clerks at the Respondent's Cleveland Hopkins International Airport facility in Cleveland, Ohio, but excluding confidential secretaries, salesmen, and all professional employees, guards and supervisors as defined in the Act.

4. Commencing on March 3, 1980, and continuing thereafter, the Union was designated by a majority of Respondent's employees in the unit described above as their exclusive bargaining representative.

5. The Union has been at all times since March 3, 1980, and still is, the exclusive bargaining representative of such employees within the meaning of Section 9(a) of the Act.

6. Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act:

(a) By recruiting and hiring additional employees while the Union's representation petition was pending, and even after the election was postponed, in the likelihood that those selected would vote against the Union.

(b) By interrogating employees individually as to their union sympathies and how they intended to vote; and further, by interrogating employees as to the union sympathies of their coworkers and asking them to report on their union activities.

(c) By creating the impression that the employees' union activities were under surveillance.

(d) By offering and granting benefits such as a supervisory position or assistance in performing a job, as an inducement to employees to forgo union representation.

(e) By implying to employees they will suffer a loss of employment benefits and career opportunities if the Union should be elected, or if they participate in a National Labor Relations Board investigation without Respondent's counsel present.

7. Respondent has violated Section 8(a)(1), (3), and (4) of the Act by discharging Alvin Gordy on September 23, 1980, in retaliation for his support of the Union and for providing information to the National Labor Relations Board during its investigation of unfair labor practice charges.

8. Respondent did not violate Section 8(a)(1) of the Act by engaging in the conduct described in paragraphs 10(b), (m), and (n) of the complaint.

9. By its violations of Section 8(a)(1), (3), and (4) of the Act, as summarized above, Respondent has prevented a free and fair election. Therefore, to best serve the purposes of the Act, Respondent is required to recognize and bargain with the Union as of March 3, 1980, the date on which the Union requested that Respondent recognize and bargain with it.

10. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent violated the Act in certain respects, I shall recommend that it be required to cease and desist therefrom. Because Respondent committed numerous pervasive and serious violations of the Act over an extended period of time and through top-level supervisors at the Cleveland facility, I conclude, that, unless restrained, Respondent is likely to engage in continuing unlawful efforts in the future to prevent its employees from engaging in union and protected concerted activity. Accordingly, Respondent will be required to refrain in any other manner from infringing on employees' rights to engage in such activity. Cf. *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

Affirmatively, Respondent will be required to offer Alvin Gordy immediate and full reinstatement to the job of which he was unlawfully deprived, or if such job no longer exists, to a substantially equivalent position without prejudice to his seniority or other rights and privileges previously enjoyed. Further, Respondent will be ordered to make Gordy whole forthwith for any loss of pay he may have suffered by reason of his discharge, March 23, 1980, to the date of Respondent's offer to reinstate him, less any net earnings during that period, in accordance with the Board's formula set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest as called for in *Florida Steel Corporation*, 231 NLRB 651 (1977).

In addition, Respondent will be required to bargain with the Union on request, such bargaining to be retroactive to March 3, 1980, the date on which the Union, having attained a majority among Respondent's employees in an appropriate unit, made its bargaining demand.

Upon the foregoing findings of fact and conclusions of law and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[23]

The Respondent, Airborne Freight Corporation, Cleveland, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Recruiting and hiring additional employees for the purpose of dissipating the Union's majority in the appropriate bargaining unit.

(b) Coercively interrogating employees as to their union membership, sympathies, or activities, or those of their coworkers or requesting employees to report on the union activities of others.

(c) Giving employees the impression that their union activities are under surveillance.

(d) Offering or granting employees any benefits, such as a wage increase, supervisory posts, or other improvements in their terms and conditions of employment as an inducement to forgo representation by the Union or any other labor organization.

(e) Stating or implying to employees that they will suffer any loss of employment benefits or career opportunities if a union is elected, or if they cooperate in a National Labor Relations Board investigation without Respondent's attorney present.

(f) Terminating or otherwise discriminating against employees because they have engaged in union or other protected concerted activity or because they have supported the Union or provided information to the National Labor Relations Board.

(g) Refusing to bargain collectively with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union 407, as the exclusive representative of the employees in the following appropriate unit:

> All full-time and regular part-time operations agents, customer service representatives, rate clerks, operations clerks, and billing clerks, at the Employer's Cleveland Hopkins International Airport facility in Cleveland, Ohio, but excluding confidential secretary, salesmen, and all professional employees, guards and supervisors as defined in the Act.

(h) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Upon request, bargain collectively and in good faith with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union 407, as the exclusive representative of all the employees in the above-described appropriate unit, and embody in a signed agreement any understanding reached.

(b) Reinstate Alvin Gordy to his former position or a substantially equivalent position of employment and make him whole for any losses suffered as a result of discrimination against him.

(c) Post at its place of business in Cleveland, Ohio, copies of the attached notice marked "Appendix."[24] Copies of said notice, on forms provided by the Regional Director for Region 8, after being duly signed by an authorized representative of Respondent, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS ALSO ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not specifically found.

[23] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions and Order, and all objections thereto shall be deemed waived for all purposes.

[24] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading, "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of a United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

> The Act gives employees the following rights:
>
> To engage in self-organization
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
>
> To refrain from the exercise of any or all such activities.

WE WILL NOT recruit or hire additional employees for the purpose of dissipating the Union's majority in the above-described bargaining unit.

WE WILL NOT interrogate employees as to their union sympathies or activities or those of others, and WE WILL not ask employees to report on the union activities of their coworkers.

WE WILL NOT give employees the impression that their union activities are under surveillance.

WE WILL NOT offer or grant any benefits to employees, such as a wage increase, supervisory post, or any other improvements in their terms and conditions of employment as an inducement to forgo representation by the Union or any other labor organization.

WE WILL NOT state or imply to employees that they will suffer a loss of employment benefits or career opportunities if a union is elected, or if they cooperate in a National Labor Relations Board investigation without a company attorney present.

WE WILL NOT, in any like or related manner, interfere with the right of our employees to engage in organizational activity or collective bargaining or to refrain from such activities.

WE WILL NOT terminate or otherwise discriminate against any employee because he has engaged in union or other protected concerted activity or because he has provided information to the National Labor Relations Board related to the investigation of an unfair labor practice charge.

WE WILL, on request, bargain collectively with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Union Local 407 as the exclusive representative of our employees in the bargaining unit described below, and if an understanding is reached, we will embody such understanding in a signed agreement. The appropriate unit is:

> All full-time and regular part-time operations agents, customer service representatives, rate clerks, operations clerks and billing clerks, at the Employer's Cleveland Hopkins International Airport facility in Cleveland, Ohio, but excluding confidential secretary, salesmen, and all professional employees, guards and supervisors as defined in the Act.

WE WILL reinstate Alvin Gordy to his former or a substantially equivalent position of employment and will make him whole for any losses suffered as the result of discrimination against him, with interest.

AIRBORNE FREIGHT CORPORATION